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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,279	07/31/2003	Keith A. Ranieri	FIRS-2992	3766
5409 7590 11/24/2010 SCHMEISER, OLSEN & WATTS 22 CENTURY HILL DRIVE SUITE 302 LATHAM, NY 12110				
EXAMINER				
UTAMA, ROBERT J				
ART UNIT		PAPER NUMBER		
3715				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/631,279

Applicant(s)

RANIERE, KEITH A.

Examiner

ROBERT J. UTAMA

Art Unit

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/10/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-8 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/GS-08)
Paper No(s)/Mail Date 09/10/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the application

1. This office action is a response to the amendment and arguments submitted on 09/10/2010. The current statuses of the claim in the application are as follows: claims 1, 4-8, 17-20 are still pending and claims have been cancelled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 4-8, 17-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for *having a type of stress increased by the control system that includes a physical activity*, does not reasonably provide enablement for *having a type of stress increased by the control system that includes environmental hostility, emotional stress and mathematical calculation*. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. In this particular case, the specification only provides a training system that increases the amount of physical activity (i.e.: increasing the speed of the treadmills). The specification fails to show wherein the stress increased by the control system includes environmental hostility, emotional stress and mathematical calculation and the type of stress actually increased during the training the trainable subject by the control system corresponds to the trainable subject that is responsive to the stress.

5. Claims 1, 4-8, 17 and 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. However, the specification, as originally submitted on 07/31/2003, do not provide a teaching repeating the method, recalculating the point of efficiency, determining a new tolerance function surrounding the new point of efficiency, training the trainable subject within the new tolerance functions of the new point of efficiency and wherein the new point of efficiency is recalculate and changes each repetition of the method. Furthermore, the limitation of claims 1 and 17 includes the physical activity, environmental hostility, emotional stress and mathematical calculation. The limitation seems to suggest all of these stimuli are applied simultaneously. However, the disclosure only provides a teaching that where one stimulus is applied at a time.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dardik 6,702,720, in view of Yoshida et al (NPL) and in view of Kindermann et al (NPL), in view of Anderson et al 4,463,764 and further in view of Dardik US 6,702,720**

Claims 1 and 17: The Yoshida et al reference provides a teaching of:

providing a performance system (see page 224 "Monark bicycle ergometer");

Measuring an initial measurement of a first parameter of a trainable subject; (see page 224 paragraph 4 "... ECG, blood pressure, spirometry ..."); determining using the control system, for a given activity a point of efficiency of the trainable subject with respect to the first parameter, wherein the point of efficiency is determined by repeatedly increasing stress on the trainable subject by controlling the second parameter and the re-measuring the first parameter until just prior to the trainable subject no longer being able to accommodate additional stress and entering a state of inefficiency or exhaustion causing first parameter to vary more rapidly or less rapidly with respect to the second parameter (see page 224 paragraph 5 - page 225 paragraph 1); repeating the method wherein the point of efficiency is recalculated and changes each repetition of the method (see page 225 "Training Regimen" and page 228-229).

The Yoshida reference provides a teaching of providing a control system for controlling a second parameter, wherein the second parameter is a parameter of the performance system and determining a range of tolerance using the control system, surrounding said point of efficiency. However, the Dardik reference provides a teaching of providing a control system for controlling a second parameter, wherein the second parameter is a parameter of the performance system (see col. 5:40-50) and determining a range of tolerance using the control system, surrounding said point of efficiency (see col. 9:55-67). Therefore, it would have been obvious to one of ordinary skill in the art to include the feature of a control system for controlling a second parameter, wherein the second parameter is a parameter of the performance system and determining a range of tolerance using the control system, surrounding said point of efficiency, as taught by Dardik, in order to allow the individual to be trained in an optimal condition (see abstract).

The Yoshida fails to provide a teaching of training the trainable subject within the range of tolerance of the point of efficiency. However, the Kindermann reference provides a teaching of training the subject within said range of tolerance of the point of efficiency so the duration the subject can maintain the point of efficiency changes (see page 29). Therefore, it would have

been obvious to one of ordinary skilled in the art to include the feature of training the subject within said range of tolerance of the point of efficiency so the duration the subject can maintain the point of efficiency changes, as taught by Yoshida, in order to , provide an effective training regimen.

The Yoshida is silent with respect to setting an initial point of efficiency of the trainable subject with respect to the initial measurement of the first parameter; determining a range of tolerance, using the control system, surrounding the initial point of efficiency; starting a timer to measure an elapsed time of a given activity; training the trainable subject within the range of tolerance of the initial point of efficiency; wherein the type of stress increased by the control system includes physical activity, environmental hostility, emotional stress, and mathematical calculations, the type of stress actually increased during the training of the trainable subject by the control system corresponds to the trainable subject that is responsive to that stress;

stopping the timer, using the control system, when the current measurement of the first parameter is outside of the range of tolerance; recording a length of time in which the trainable subject remained in a state of accommodation, wherein the trainable subject remains in a state of accommodation until the current measurement of the first parameter is outside the range of tolerance; and, including: determining a new range of tolerance, using the control system, surrounding the new point of efficiency; training the trainable subject within the new range of tolerance of the new point of efficiency. However, the Anderson provides a teaching of setting an initial point of efficiency of the trainable subject with respect to the initial measurement of the first parameter; determining a range of tolerance, using the control system, surrounding the initial point of efficiency; starting a timer to measure an elapsed time of a given activity; training the trainable subject within the range of tolerance of the initial point of efficiency; wherein the type of stress increased by the control system includes physical activity, environmental hostility, emotional stress, and mathematical calculations, the type of stress actually increased during the training of the trainable subject by the control system

corresponds to the trainable subject that is responsive to that stress; stopping the timer, using the control system, when the current measurement of the first parameter is outside of the range of tolerance; recording a length of time in which the trainable subject remained in a state of accommodation, wherein the trainable subject remains in a state of accommodation until the current measurement of the first parameter is outside the range of tolerance; and, including: determining a new range of tolerance, using the control system, surrounding the new point of efficiency; training the trainable subject within the new range of tolerance of the new point of efficiency (see col. 5:5-50). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of setting an initial point of efficiency of the trainable subject with respect to the initial measurement of the first parameter; determining a range of tolerance, using the control system, surrounding the initial point of efficiency; starting a timer to measure an elapsed time of a given activity; training the trainable subject within the range of tolerance of the initial point of efficiency; wherein the type of stress increased by the control system includes physical activity, environmental hostility, emotional stress, and mathematical calculations, the type of stress actually increased during the training of the trainable subject by the control system corresponds to the trainable subject that is responsive to that stress; stopping the timer, using the control system, when the current measurement of the first parameter is outside of the range of tolerance; recording a length of time in which the trainable subject remained in a state of accommodation, wherein the trainable subject remains in a state of accommodation until the current measurement of the first parameter is outside the range of tolerance; and, including: determining a new range of tolerance, using the control system, surrounding the new point of efficiency; training the trainable subject within the new range of tolerance of the new point of efficiency, as taught by Anderson, in order to allow the individual to be trained in an optimal condition (see abstract).

Specifically with respect to claim 17, the Yoshida reference provides a teaching of activating the performance system (see page 224 "Monark bicycle ergometer) and recording at least one second parameter (see FIG 2"workload").

While the Dardik reference does not explicitly teaches "the at least one sensor measuring an initial measurement of the first parameter", the examiner interpret such limitation as an intended use limitation that does not cause a structural differences.

Claim 4-6 and 18-20: The Yoshida reference provides a teaching of the first parameter is a physical parameter and the first parameter is selected from chemical activity profile and VO2 (see page 224 VO2max, VO2 and heart rage "Incremental exercise test").

Claim 7: The Yoshida reference provides a teaching of first parameter is selected is observed by a signal selected from physical motion (see heart rate).

Claim 8: The Yoshida reference provides a teaching wherein the trainable subject selected from the group of a human (see page 224 "... Thirteen healthy male college students ...").

Response to Arguments

8. Applicant's arguments filed 09/10/2010 have been fully considered but they are not persuasive.
9. With respect to applicant's argument on the rejection on claims 1, 4-8 and 17-20 under 35 U.S.C 112 first paragraph; the applicant argued that the specification provides a teaching of repeating method and re-calculating a point of efficiency (see specification page 18 paragraph 2). However, the examiner would like to point out that the none of the steps, as seen item 96-112 in FIG 5 and page 18 paragraph 2, shows any mention of recalculating the efficiency point, determining a new tolerance function surrounding the new point of efficiency and training the trainable subject within the new tolerance functions of the new point of efficiency. As such,

the examiner takes the position that the rejection on claims 1, 4-8 and 17-20 are warranted and will be maintained.

10. With respect to applicant's argument on the rejection on claims 1, 4-8 and 17-20 under 35 U.S.C 112, second paragraph, the rejections have been withdrawn. Applicant's amendment is sufficient to overcome the rejection.

11. With respect to applicant's argument on claims 1, 4-8 and 17-20 under 35 U.S.C 103. The applicant argues that the Yohsida reference do not provide a teaching of training the trainable subject with the range of tolerance and within a new range of tolerance for a new point of efficiency. However, the claim limitation does not require the trainable subject be trained at both range of tolerance simultaneously. Furthermore, the value of the "new" range of tolerance and "new" point of efficiency can only be determined at the end of a training session. With respect to the applicant's argument that the Yoshida reference do not provide a teaching of recalculating a new point of efficiency; the applicant argues that the Yoshida reference only trains the subject for the same training period. However, the examiner has never equated the new point of efficiency with the length of the training period. Furthermore, the limitation of claim 1 and 17 do not equate the new point of efficiency with the length of the training program. The applicant is free to insert such limitation into the claim limitation of claim 1 and 17.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. UTAMA whose telephone number is (571)272-1676. The examiner can normally be reached on 9-5:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. U./
Examiner, Art Unit 3715

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3715